

**Testimony before the U.S. House of Representatives**  
**House Committee on International Relations**  
**Subcommittee on International Terrorism and Nonproliferation**

**By**

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Thank you Chairman Royce, Ranking Member Sherman, and Distinguished Members of the Subcommittee for the invitation to appear before you today to speak about immigration-related border security. I am Blas Nuñez-Neto, an Analyst in Domestic Security at the Domestic Social Policy Division of the Congressional Research Service. As you know, Customs and Border Protection (CBP) within the Department of Homeland Security (DHS) is responsible for securing our nation's borders at and between official ports of entry (POE). In the wake of the terrorist attacks of September 11, 2001, the security of our borders has become of paramount importance to national security. My testimony will focus on the steps that DHS, through CBP, has taken to address the security of our international border at and between POE since 9/11 in order to prevent the entry of terrorists.

At POE, CBP officers are charged with inspecting all the individuals that present themselves for entry into the United States. The Immigration and Nationality Act requires the inspection of all aliens who seek entry into the United States at POE; and in some cases allows for preinspection when departing a foreign country on route to the United States. The purpose of the inspection is to determine the admissibility of a traveler to the United States. Primary inspection, the first level of inspection, consists of a brief interview with an immigration inspector, a cursory check of the traveler's documents and a query of the Interagency Border Inspection System (IBIS). At all air and sea POEs, CBP Officers use the United States Visitor Immigrant Status Indicator Technology Program (US-VISIT) system during primary inspection to verify the identity of individuals

attempting to enter the United States. According to CBP, US-VISIT has been deployed to all POE. However, at land POE the system is only being used during secondary inspection, and typically only about 1% of travelers are subjected to secondary inspections. The exit component of the US-VISIT system is currently being piloted at 12 airports and 2 seaports. It is unclear what the timetable is for deploying the exit component of the US-VISIT system to all POE. The 9/11 Commission report identified the completion of a biometric entry-exit screening system as being “an essential investment in our national security.” Without verifying the identity of travelers who leave the United States, DHS has no easy way of identifying the individuals who overstay their visas. Given that all of the 9/11 terrorists entered the country through POE, and that some of them overstayed their visas, it could be argued that this represents a weakness in our border security system as it is currently configured.

The 9/11 Commission also recommended that all border screening systems, including frequent traveler programs, should be consolidated into the US-VISIT system, and that all travelers entering the United States be subject to biometric identity verification (not just those requiring visas or from visa-waiver countries). The 9/11 Commission noted that even when individuals from visa-waiver countries were added to the US-VISIT system, only 12% of the non-citizens crossing the U.S. border were required to register with US-VISIT. As it stands today, most of these systems continue to operate separately, and the large majority of people entering the United States (Mexican nationals with laser visas and Canadian nationals) are exempt from being entered into the US-VISIT system. While Mexican nationals entering the country with laser visas have undergone background checks and are required by law to have their identities verified through the Biometric Verification System (BVS), this system is operational only at secondary inspection at selected land POE and thus is not being used to verify the identity of the majority of the Mexican nationals entering with laser visas.

Another recommendation of the 9/11 Commission directly concerning POE was the elimination of the so-called “Western Hemisphere Exception,” whereby U.S. Citizens returning to the United States from Western Hemisphere countries, and Canadian nationals, Mexican nationals with a laser-visa, and citizens of some island nations entering the United States from the Western Hemisphere, are not required to present passports. Congress took steps to address this issue in the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004. Section 7209 of IRTPA required that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement a plan as expeditiously as possible to require a passport or other document, or combination of documents, "deemed by the Secretary of Homeland Security to be sufficient to denote identity and

citizenship," for all travelers entering the United States by January 1, 2008. This new program has been referred to as the Western Hemisphere Travel Initiative (WHTI).

DHS issued a preliminary notice of rule-making for the WHTI program on September 1, 2005. The proposed plan requires all U.S. citizens, Canadians, citizens of the British Overseas Territory of Bermuda, and citizens of Mexico to have a passport or other accepted secure document to enter or re-enter the United States by January 1, 2008. The plan is to become effective in two phases:

- December 31, 2006, applied to all air and sea travel to or from Canada, Mexico, Central and South America, the Caribbean, and Bermuda.
- December 31, 2007, extended to all land border crossings as well as air and sea travel.

On January 17, 2006, DHS and the Department of State announced plans to implement a new registered traveler program under the auspices of the WHTI by the end of the year. This program would be known as the People Access Security Service (PASS) system, and it would feature a driver's license sized card which would incorporate a biometric and which would be cheaper than a passport. However, DHS has yet to issue technical standards for the PASS card, leading the Travel Industry Association of America to note that the "industry is becoming increasingly concerned about the limited progress that [DHS and the State Department] have made in the 15 months since [the Intelligence Reform and Terrorism Prevention Act] was enacted, including the last few months since PASS was unveiled officially." It is still unclear when DHS plans to release these technical standards, and what effect this will have on POE infrastructure and wait times at the border. In recent years, a number of different technologies, including the US-VISIT program, have been rolled out to POE. Many observers have warned that the current infrastructure at the border is not adequate to accommodate these technologies without adversely impacting wait times at the border. With the advent of the WHTI, the demand for improved infrastructure will continue to be critical.

Between POE, the United States Border Patrol is the lead agency within CBP charged with securing the border— an important part of our overall national security strategy. In 1994, the Border Patrol began implementing a strategy to deter illegal entry known as "prevention through deterrence." This strategy's goal was to raise the risk of being apprehended to the point where aliens would be dissuaded from trying to enter. The strategy called for placing Border Patrol resources and manpower directly at the border along the areas of greatest illegal migration in order to detect, deter, and apprehend aliens attempting to cross the border between official points of entry. This deployment

reflected the Border Patrol's goal of rerouting the illegal border traffic from traditional urban routes to less populated and more geographically challenging areas, providing Border Patrol agents with a tactical advantage over illegal border crossers and smugglers. There have been some unintended consequences to this strategy, however, including an increase in the number of migrant deaths along the border, the increasing visibility of illegal immigration as individuals who used to cross into border cities and melt into the population now cross geographically isolated areas, and some evidence that those individuals who succeed in entering the country are staying longer than they used to.

After September 11, 2001, the Border Patrol refocused its strategy on preventing the entry of terrorists and weapons of mass destruction. In order to prevent and deter terrorist entry, intelligence and surveillance operations have been focused on known smuggling operations that have previously trafficked aliens from countries known to harbor terrorists or promote terrorism. The Border Patrol also coordinates and shares intelligence with Canadian and Mexican authorities. It is important to note, however, that the increased emphasis on preventing terrorist entry into the United States did not change the scope of the Border Patrol's mission -- preventing unauthorized aliens from entering the country. Since 1997, the Border Patrol has averaged 1.28 million apprehensions each fiscal year (FY); the vast majority (97%) of these apprehensions occur at the southwest border. As a result of this, the Border Patrol deploys roughly 90% of its agents to sectors along the border with Mexico. Congress has emphasized border security between POE by funding a large increase in resources for the Border Patrol. Appropriations for the Border Patrol have grown steadily, from \$1.06 billion in FY2000 to \$1.74 billion in FY2006--an increase of 64%. Accompanying the budget increase, Border Patrol manpower has more than doubled over the past decade. At the end of FY2005, the Border Patrol had 11,268 agents on board.

Apprehensions increased steadily through the late 1990s, reaching a peak of 1.65 million in 2000. From 2000 to 2003 apprehensions declined steadily, reaching a low of 905,065 in 2003. In FY 2004, apprehensions increased by 26 percent to 1.15 million; apprehensions remained relatively stable in FY2005, increasing slightly to 1.19 million. Some argue that the increase in apprehensions over the last two years was due to the President's guest-worker plan, which may have given would-be immigrants an incentive to enter the country illegally. DHS has maintained that the increase was due to the increase in agents assigned to line-watch duty along the Arizona border as a result of the Arizona Border Control initiative. The number of other than Mexican (OTM) apprehensions remained relatively stable from 1997 to 2002, averaging almost 37,000 a year over the six-year time period. Over the last three years, OTM apprehensions have more than quadrupled, increasing by

343% to 165,175 in FY2005. This trend contrasts with the apprehensions of Mexican aliens, which have remained relatively stable over the same period. CBP reports that through June 26 in FY2006 (or roughly 3/4 of the fiscal year), the Border Patrol has apprehended 81,181 OTMs. While this appears to be a reduction from the number of OTMs apprehended in FY2005, it nevertheless remains considerably higher than the number of OTMs apprehended in the late 1990s. There are a variety of factors that may be underlying this rapid increase, but one possible reason for the influx of non-Mexican migrants may be the growing international awareness that a “loophole” may exist in the U.S. immigration system, whereby the lack of detention bedspace leads to many OTMs being released on their own recognizance into the interior of the United States. Along the Texas border, for example, 80% of the OTMs apprehended in FY2005 were released on their own recognizance due to a lack of available detention space.

In keeping with the national focus on preventing another terrorist strike, DHS is to pay special attention to OTMs apprehended by the Border Patrol who originate from 35 nations designated as “special interest” countries known to harbor or promote terrorism. OTMs from special interest countries are to be processed more carefully by the Border Patrol. In addition to the normal background checks that are conducted, the Border Patrol is to notify the FBI, the Joint Terrorism Task Force, and the National Targeting Center in order to consult with counter-terrorism specialists concerning the OTM in question. Much like overall OTM apprehensions, special interest apprehensions remained relatively stable from FY1997 to FY2001. However, while overall OTM apprehensions have increased by 343% from FY2002 to FY2005, special interest OTM apprehensions have declined by 24% over the same period. In other words, during this period in which the Border Patrol has been apprehending rapidly-increasing numbers of non-Mexican aliens, the number of aliens being apprehended from special interest countries has actually been decreasing. Nevertheless, the data indicate that each year hundreds of aliens from countries known to harbor terrorists or promote terrorism are apprehended attempting to enter the country illegally between POE.

While the threat of terrorist infiltration along the southwest border may be ever-present, the actual numbers of people from countries known to harbor terrorism trying to enter the United States has been declining somewhat. However, the sheer increase in non-Mexican aliens coming across the border makes it more difficult for Border Patrol agents to readily identify and process each OTM, thereby increasing the chances that a potential terrorist could slip through the system. Moreover, there are no reliable data concerning how many OTMs evade apprehensions and successfully enter the country illegally across the border. While there is no documented evidence that terrorists have

attempted to cross or been apprehended crossing the land border between POE, testimony by DHS acting Secretary Admiral James Loy suggested that Al-Qaeda is considering infiltrating the Southwest border due to a belief that "illegal entry is more advantageous than legal entry for operational security reasons." Additionally, there have been various reports that terrorist organizations, including Al Qaeda, have been operating, recruiting members, and may be training terrorists in South American countries, including Argentina, Brazil, and Paraguay. It is unclear how many aliens of any nationality, much less from special interest countries, evade capture by the Border Patrol each year and succeed in entering the United States illegally. A potential issue for Congress is the indication that, despite the downward trend in special interest OTM apprehensions, hundreds of people from countries known to harbor terrorists or promote terrorism are caught trying to enter the United States illegally along the land border.

Along with a rapid increase in manpower over the past decade, the Border Patrol has invested in a wide array of technologies at the border, including camera and light installations, underground sensors, and unmanned aerial vehicles (UAVs). DHS considers these technologies to be force multipliers, because they augment agents' abilities to detect illegal entries. However, a DHS Inspector General (IG) review of the Border Patrol's Remote Video Surveillance (RVS) system found that the system was never integrated as originally intended, and that cameras and sensors were not linked to each other but instead had to be monitored and manipulated by Border Patrol staff. The DHS IG concluded that, due to this lack of integration, the Border Patrol's "remote surveillance technology yielded few apprehensions as a percentage of detection." The DHS IG also found that deficiencies in contract management and processes resulted in 169 incomplete RVS sites. The use of UAVs at the border has been of much interest to Congress over the past few years. IRTPA included two provisions requiring DHS to pilot the use of UAVs at the border. However, there are some structural issues with the deployment of UAVs at the border. The Federal Aviation Administration requires that all aircraft operating in U.S. airspace have the ability to detect and avoid other aircraft. Where UAVs are concerned, this means that CBP personnel at the Air and Marine Operation Center (AMOC), who typically monitor all the air traffic over the United States at any given time, must be dedicated to tracking the UAV. This could present a strain on AMOC resources, especially if large numbers of UAVs are deployed to the border. In sum, the use of advanced technologies at the border to augment Border Patrol agents' ability to detect illegal entry has been important both to DHS and to Congress. However, despite the growing use of technology to augment agent manpower in detecting intrusions, Border Patrol agents must still make the apprehensions.

Lastly, in addition to placing agents and technology on the border the Border Patrol began erecting physical barriers to deter illegal entries and drug smuggling in the early 1990s. In 1996, following the recommendations of a Sandia National Laboratory study, Congress directed the Border Patrol to erect a 14 mile-long triple layer fence in San Diego Sector. These fences have historically been constructed by the National Guard under the supervision of the Corps of Engineers. Under a memorandum of understanding between DHS and the Department of Defense, CBP was responsible for providing the funding for planning, engineering, and purchasing materials, while the construction was undertaken by military personnel at no charge. However, DHS notes in its FY2007 Congressional Budget Justifications that using this traditional approach would take until 2010 to finish the projects currently underway. For this reason, the requested increase for tactical infrastructure includes funds for a commercial contract to construct almost half of the vehicle barriers in Arizona. DHS argues that it is at a critical point in its deployment of personnel and other resources at the border, and proposes using private contractors to accelerate the construction of this infrastructure. A potential issue for Congress could involve whether using private contractors to construct border infrastructure is the most cost-effective allocation of taxpayer resources given that under the current MOU with the Corps of Engineers CBP incurs no labor costs for these projects.

In sum, since 9/11 DHS and Congress have taken some significant steps towards addressing the vulnerabilities of our border both at and between POE. However, many observers, including the 9/11 Commission, believe that significant work remains to be done. While there is little doubt that the nation is safer today than it was five years ago, a question for Congress to consider is whether the nation is safe enough. Thank you once again for your invitation to be here today, and I am at your disposal for any questions you may have.